FILE COPY

IN THE

Supreme Court of the United States

October Term, 1947.

No. 284

REV. E. B. FIELDS,

Petitioner,

vs.

ROBERT E. HANNEGAN, Postmaster General of the United States.

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Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioner, Reverend E. B. Fields, the appellant below, respectfully prays that a writ of certiorari issue to review a judgment of the United States Court of Appeals for the District of Columbia (R. 3) which affirmed the final judgment for the respondent, the defendant in the original suit in the District Court of the United States for the District of Columbia (R. A.).

A.

Summary Statement of the Matters Involved.

1. *The Suit and the parties thereto.*

This proceeding originated as a suit in equity against the respondent to declare void a fraud order issued by the Postmaster General of the United States on December 26, 1944, and for injunctive relief against the issuance of the said order. That the Government filed a motion for summary judgment on the affidavit of the Solicitor General for the Postmaster General of the United States, in support of the said motion to dismiss, motion for summary judgment and motion in opposition to an injunction *pendente lite* which had not been filed by the petitioner herein. That the court granted the summary judgment. That the petitioner represents himself to be a Minister of the Gospel and contended in his original complaint that he was disseminating religious matter for a consideration together with certain emblems for the purpose of giving a physiological impetus to the subscribers for his religious readings. The petitioner contended in addition that he did not come within the purview of Sections 259 and 732, Title 39 of the United States Code and that he was protected by the Constitutional prohibition protecting religious matters.

That the evidence was not substantial and the issuance of the said fraud order was arbitrary, capricious and whimsical. That in opposition to the motion for a summary judgment it was argued that under Rule 56b, of the Federal Rules of Civil Procedure, that the court had no right to consider the same without answer and affidavits of personal knowledge. The Court granted the summary judgment, dismissed the suit which was affirmed by the United States Court of Appeals.

2. *Theory and Factual basis of the Suit.*

The essential facts are undisputed. That the Postmaster General of Washington, D. C. on December 26, 1944, issued a fraud order against the Reverend E. B. Fields delivered to the Postmaster for New York and subsequent to the issuance of the fraud order, transcript of record, page 41, he charges the Reverend E. B. Fields with operating a scheme to defraud. The said Reverend E. B. Fields filed suit (R. 1), joint appendix, in which he contends that he was disseminating religious matters and his advertisements were not misleading; that he was never known as a "Success Master,"; that the Postmaster General's order and finding was arbitrary, capricious and predicated on belief and opinion of the Postmaster General and that he did not come within the purview of the fraud statute. The fact admitted is that the Reverend E. B. Fields did disseminate religious matters through the mails and distributed emblems, which is plainly shown by Exhibit 1a, joint appendix 7, all of which matter the Postmaster General of the United States contends was misleading and fraudulent in its nature and was part of a scheme to defraud.

B.

Jurisdiction.

The jurisdiction of this Court is invoked under Section 240 of the Judicial Code (28 U. S. Code, Sec. 347 (a)).

The judgment sought to be reviewed was entered in the Court of Appeals on the 2nd day of June, 1947.

The opinion of the Court of Appeals is filed as a part of the record herein. That a Statutory provision which either by the withholding of a permit or by virtue of the act of an Administrator in prohibiting the disseminating of religious matter or soliciting funds is a violation of the 1st and 14th Amendment to the extent that it is a censorship of religion by an Administrative Agency. The Court by the granting

of a summary judgment when the Government admits by a motion to dismiss the allegations of the complaint to be true where complaint states that the finding of the Postmaster General was not supported by substantial evidence and that his findings were arbitrary and capricious, being denied a hearing on the merits of his case. The affidavit in support of the motion for summary judgment was hearsay.

C.

Questions Presented.

1. Whether or not the issuance of a fraud order by the Postmaster General of the United States was in violation of the Petitioner's Constitutional rights?

2. Whether the dissemination of religious matters through the mails comes within the purview of the fraud statute?

3. Whether or not the Court by virtue of statements contained in the pleadings admitting the allegations of the complaint could grant a summary judgment on affidavits?

D.

Reasons Relied on for Allowance of the Writ.

1. The Supreme Court of the United States had held in Cantwell vs. State of Conn. 60 Supt. Ct. 900, 310 U. S. 296, that a Statutory provision prohibiting the solicitation of money for religious charities and philanthropic cause without the approval of the Public Welfare Council and the authorizing of the Secretary upon application of any person on behalf of such cause to determine whether such cause was a religious one or a *bona fide* object of charity or philanthropy is a violation of the 1st and 14 amendment to the extent that it authorizes the censorship of religion by the Secretary by the withholding of his approval.

There is no distinction between the approval of the Welfare Council in the Conn. case and the Postmaster General in this case withholding the right of the petitioner herein to use the mails for the purpose of disseminating religious matter.

2. This case presents a question of general importance which should be settled by this Court, namely, whether an Administrative Agency has the power and the authority to censure the dissemination of religious matter.

3. This case further presents a question as to when a Court can grant a summary judgment. The Federal Rules of Civil Procedure provides under rule 56b, "A party against whom a claim, counterclaim or cross-claim is asserted where a declaratory judgment is sought, may at any time move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof." Rule 56c states that, "The motion shall be served at least ten days before the time specified for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions and admissions on file, together with the affidavits, if any show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law, but wherever the pleadings present an issue of fact, the summary judgment should not be allowed before answer is filed," no answer was filed in the instant case. Nikolson v. Nestles Milk Products, Inc. (C. C. A. 5) 107 Fed. (2d) 17, such a procedure would be a denial of due process of law where a genuine issue of fact exists between the parties. Each of the foregoing questions were seasonably and properly raised in the District Court and also in the Court of Appeals of the District of Columbia and were considered and decided adversely to the Petitioner herein in both of the said Courts. The Court said that the evidence before the Postmaster General supports his find-

ing of fraud, since there was nc other question before the court of summary judgment was right. That the literature as indicated shows that the representations were pertaining to religious readings and that such matter was purely and distinctly set forth in his advertisement and clearly shows that there was no intent to mislead. The Court of Appeals stated that a religious ingredient is no better defense to a charge of fraud than to a charge of murder, the court failed to consider the aspect between the representation of the petitioner and the specific intent on the part of a person who is charged with murder. That the representations made by the court in its comment said, the fact that a false statement may be obvious to those trained and experienced does not change its character or take away its power to deceive others less experienced. That the clear and distinct statement of religious matter firmly carries away any fraudulent intent on the part of the petitioner herein, that any religious matter under such a broad interpretation might be termed fraudulent.

In support of the foregoing grounds for application, your petitioner submits herewith, the accompanying brief setting forth in detail the precise facts and arguments thereto, the petitioner further states that this application is filed in good faith and not for the purpose of delay.

Conclusion.

Wherefore, it is respectfully submitted that this petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia should be granted.

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1947.

No.

REV. E. B. FIELDS,

Petitioner,

v.

ROBERT E. HANNEGAN, Postmaster General of the United States of America,

Respondent.

BRIEF IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

Opinion of Court Below.

The opinion of the United States Court of Appeals for the District of Columbia is not yet officially reported but is printed in the record filed in this cause.

Jurisdiction.

The jurisdiction of the Court is invoked under Section 240(2) of the Judicial Code (28 U. S. Code Sec. 347 (a)). The date of the judgment in this case is June 2, 1947, (R). No petition for a rehearing was filed in this case.

Statement of the Case.

The statement of the case and a statement of the salient facts from the record appear in the accompanying petition for certiorari. An elaboration of the facts will be made in the course of argument.

Errors Below Relied Upon Here.

The United States Court of Appeals for the District of Columbia in affirming a summary judgment in the District Court of the United States for the District of Columbia, upholding a fraud order issued by the Postmaster General of the United States on December 26, 1944 against the petitioner, Rev. E. B. Fields, the Court of Appeals erred in that:

I. They have improperly interpreted cases which give jurisdiction to the Postmaster General of the United States in the issuance of a fraud order and refused to apply doctrines as enunciated in the American Magnetic Healing Case decided by the Supreme Court of the United States.

II. That the Court of Appeals refused to recognize the Constitutional privileges of citizens as to religion and freedom of speech and extending the right of censorship to the Postmaster General of the United States by Judicial interpretation of Sections 259 and 732 Title 39 of the U. S. Code.

III. The Court further committed error in finding that the summary judgment was proper.

Argument.

The decision below and all other cases dealing with the power of the Postmaster General under the existing statutory provisions, Sections 259 and 732, Title 39 of the U. S. Code, dealing with the statutory provision giving the Post-

master the power to issue a fraud order as an administrator, fallaciously assumed that the subject matter of the order was clearly palpably fraudulent and not matters over which conscientious people of learning would differ.

The pertinent portions of the statutes involved are as follows: Act of Sept. 19, 1890, C. 908 (26 Stat. 466), U. S. C., Title 39, Sec. 259 as amended March 2, 1895, C. 191 (28 Stat. 964).

> "The Postmaster General may, upon evidence satisfactory to him that any person or company is engaged in conducting any lottery, gift enterprise, or scheme for the distribution of money, or of any real or personal property by lot, chance or drawing of any kind, or that any person or company is conducting any other scheme or device for obtaining money or property of any kind through the mails by means of false or fraudulent pretenses, representations, or promises, instruct Postmasters at any post office at which registered letters or any other letters or mail matter arrive directed to any such person or company, or to the agent or representative of any such person or company, whether such agent or representative is acting as an individual or as a firm, bank, corporation, or association of any kind, to return all such mail matter to the postmaster at the office which it was originally mailed, with the word 'Fraudulent', plainly written or stamped upon the outside thereof; and all such mail matter so returned to such postmasters shall be by them returned to the writers thereof, under such regulations as the Postmaster General may prescribe."

Act of Sept. 19, 1890, C. 908 (26 Stat. 466), U. S. C. Title 39 Sec. 732.

> "The Postmaster General may, upon evidence satisfactory to him that any person or company is engaged in conducting any lottery, gift enterprise, or scheme for the distribution of money or of any real or personal property by lot, chance, or drawing of any kind through the mails by means of false or fraudulent pretenses, representations, or compromise, forbid the payment by any postmaster to said person or company of any postal money orders drawn to his or its order, or in his or its

favor, or to the agent is acting as an individual or as a firm, bank, corporation, or association of any kind, and may provide by regulation for the return to the remitters of the sums named in such money orders."

That the Postmaster General of the United States under a mistake of fact assumed jurisdiction over the instant case. It is to be argued here the same as was stated in the American Magnetic Healing v. McAnnulty case, 187 U. S. 94, 47 L. Ed. 90, there being a question of law simply:

" * * * stated in the bill being outside of the statute and the result is that the Postmaster General has ordered the retention of letters addressed to the complainant in a case not authorized by those statutes. To authorize interference by the Postmaster General, the facts stated must in some aspect be sufficient to permit him under the statutes to make order."

The American Magnetic Healing case further states that:

"conceding *arguendo*, that when a question of fact arises, which if found in one way, would show a violation of the statutes in question in some particular, the decision of the Postmaster General that such violation had occurred, based upon some evidence to that effect, would be conclusive and final and not subject to review by any court, yet to that assumption must be added the statement that if the evidence before the Postmaster General, in any view of the facts, failed to show a violation of any Federal Law, the determination of that Official that such violation existed would not be the determination of that official that such violation existed would not be the determination of a question of fact but a pure mistake of law on his part, because these facts being conceded whether they amounted to a violation of the statutes would be a legal question and not a question of fact. Being a question of law simply and the case stated in the bill being outside of the statutes, the result is that the Postmaster General has ordered the retention of letters directed to complainant in a case not authorized by those statutes.

"To authorize the interference of the Postmaster General the facts stated must in some aspects be sufficient to permit him under the statute to make the order.

"The facts which are here admitted of record show that the case is not one by which any construction of those facts is covered or provided for by the statutes under which the Postmaster General has assumed to act, and his determination that those admitted facts do authorize his action is a clear mistake of law as applied to admitted facts, and the courts, therefore must have power in proper proceeding to grant relief. Otherwise the individual is left to the absolutely uncontrolled and arbitrary action of a public and administrative officer, whose action is unauthorized by any law and is in violation of the rights of the individual. Where the action of such an officer is thus unauthorized he thereby violates the property rights of the person whose letters are withheld. * * *"

That the Postmaster General in the instant case has wrongfully assumed jurisdiction under a mistake of law which cannot be disputed for the record clearly shows that the subject matter of the fraud order were matters of opinion and his assumption of jurisdiction is a clear mistake of law, that it is impossible to reduce to purely a question of fact the readings subscribed to and the literature disseminated. That in the case of Millby v. United States, 48 CCA 579, 109 Fed. 638, states the reason promises might seem unreasonable to others will not exclude him from the use of the mails and further states and it was held * * *

" * * * the letter on its face is plainly an indirect disguised proposition to sell counterfeit money, quite unskilled in form compared with the schemes which usually come to light in the adjudged cases, it is plainly evident from the course pursued in relation to the letter by the Postmaster at Albany that he was left in no doubt or difficulty whatever as to the meaning and object of the proposition contained in the defendant's letter, direct or indirect or other facts and circumstances which would constitute a scheme devised by the defendant to defraud Stites, herein this respect are not given in this indictment, the proposition contained in the letter was entirely devoid of frankness or artfulness and could not have been misunderstood in the ordinary case."

The fact that this man has clearly set forth distinctly the subscribers would receive religious readings is certainly sufficient to carry this case without the purview of the fraud statutes.

II.

The Constitution of the United States by virtue of the First Amendment, places a prohibition upon Congress with respect to legislation interfering with freedom of religion and freedom of speech:

ARTICLE I.

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Congress however zealous is expressly deprived of any authority to legislate with respect to the exercise of religious freedom. The dissemination of religious literature is no more or less than a right reserved to the people by the Constitution.

This Court in ruling in the Cantwell Case, 310 U. S. 296:

> "That a statute which makes it necessary for a philanthropic, religious or charity make application to and receive the approval of the Public Welfare Counsel and authorizing the Secretary to determine whether such cause is a religious one or a bona fide charity or philanthropy is a violation of the First and Fourth Amendment to the Constitution,"

certainly is analogous to the instant case which vests such power in the Postmaster General of the United States.

Religion as a medium of incentive and psychological impetus is an exercise of religious freedom and does not fall in the category of practices inimical to public welfare.

In the case of Reynolds v. United States, 98 U. S. 145, the court says:

> "* * * Congress cannot pass a law for the Government or the Territory which shall prohibit the free exercise of religion, the First Amendment to the Constitution expressly forbids such legislation, and religious freedom is guaranteed everywhere throughout the United States so far as Congressional interference is concerned."

The Reynolds case further stated:

> "* * * Congress was deprived of all legislative power over mere opinion, but was free to reach actions which were in violation of social duties or subversive of good order. * * *"

The dissemination of religious literature is not a religious practice but is an expression of religious opinion being disseminated, as to whether it is good or bad is not before the Court, but as to whether contents and advertisements are such as to put on notice subscribers that they were to obtain from the sender religious literature as long as he had advertised the readings to be matters of Bible readings, whatever other motive he might have had, the petitioner is still within the perview and protection of the First Amendment as Mr. Justice Holmes and Mr. Justice Brandies in a dissenting opinion of this Court in the case of Leach v. Carlile, 258, U. S. 138, 66 L. Ed. 511, said as follows:

> "* * * The Statute under which fraud orders are issued by the Postmaster General has been decided or said to valid so many times that it may be too late to except a contrary decision. But there are considerations against it that seem to me never to have been fully weighed and that I think it my duty to state.
>
> The transmission of letters by any other means other than the postoffice is forbidden by the Criminal Code, Section 183-185, therefore, if these prohibitions are valid, this form of communication with people at a distance is through the postoffice alone; and notwithstanding all modern inventions letters are still the principal means of speech with those who are not before

our face. I do not suppose that anyone would say that the freedom of written speech is less protected by the First Amendment than the freedom of spoken words, therefore I cannot understand by what authority Congress undertakes to authorize anyone to determine in advance on the grounds before us, that certain words shall not be uttered. Even those who interpret the Amendment most strictly agree that it was intended to prevent previous restraints. We have not before us any question as to how far Congress may go for the safety of the Nation.

The question is only whether it may make possible irreparable wrongs and the ruin of business in the hope of preventing some cases of private wrong that generally is accomplished without the aid of the mail. Usually private swindling does not depend on the postoffice. If the execution of this law does not abridge the freedom of speech I do not see what could be said to do so.

Even if it should be held that the prohibition of other modes of carrying letters was unconstitutional, as suggested in a qualified way in *Ex parte* Jackson, 96 U. S. 727, it would not get rid of the difficulty to my mind because the practical dependence of the public on the postoffice would remain. But the decision in that case admits that possibly at least the prohibition as to sealed letters. The decisions thus far have gone largely if not wholly on the ground that if the Government chose to offer a means of transportation which it was not bound to offer it could choose what it would transport; which is well enough when neither law nor the habit that the Government's action has generated has made that means the only one. But when habit and law combine to exclude every other it seems to me that the First Amendment in terms forbids such control of the post as was exercised here. I think it abridged freedom of speech on the part of the sender of the letters and that the appellant had such interest in the exercise of the right that he could avail himself of it in this case."

Buchanan v. Warley, 245 U. S. 60.

In both the Reynolds and the dissenting opinion in the Carlile case, the Court of Appeals in rendering its opinion, says, that a religious ingredient is no better defense to a

charge of fraud than to a charge of murder has no application when Congress is expressly prohibited from the passing of such legislation.

III.

Rule 56b, Federal Rules of Civil Procedure, controlling practice in the Federal Courts of the United States as to summary judgments.

Approaching the instant case with this Rule in mind, it is submitted that the evidence before the Postmaster General was insufficient to support a summary judgment.

Rule 56b, of the Federal Rules of Civil Procedure, controlling the practice in the Federal Courts of the United States, has been interpreted by Judicial bodies to mean that, where a genuine issue of fact exists, a summary judgment cannot be had. The opinion of the United States Court of Appeals in holding that the summary judgment was right (R. 134), is erroneous because several genuine issues of fact were involved and existed.

1. The bill of complaint alleged that the petitioner was engaged in disseminating religious readings (R. 2).
2. The Government contended that Scripture reading was not religious matters (R. 120).
3. The petitioner shows by his affidavit and exhibits that he clearly disclosed the method used to obtain the objectives is by scripture reading (R. 19).

That the United States Court of Appeals by its opinion in this case (R. 134) has reversed its position in the case of Hannigan v. Read Magazine, 158 Fed. 2d, 542, where the court said,

> "The impression which is the criterion is that of a reasonable reader, not the most malign impression uninhibited by reason",

but in the instant case changed its position as follows,

> "the fact that a false statement may be obviously false to those who are trained and experienced does not change its character nor take away its power to deceive others of less experience" (R. 135).

That the statute conferring power to withhold the use of mail for fraud does not by implication or expressly give the Postmaster General the power of censorship as to quality of the literature, see

Hannegan v. Esquire, Inc., 327 U. S. 146.

That the advertisements of the petitioner clearly set forth that he would send scripture readings to the subscribers as a psychological impetus (R. 4 & 6).

That from casual reading of the advertisement a reasonable person would believe that they were to receive scripture readings and that all religious matters whatever they may promise is but a psychological impetus and is purely a question of opinion and belief and not susceptible to scientific proof.

If the courts were to take the position that representations dealing in these controversial fields of philosophy, religion, psychology and sociology were frauds if sold and disseminated for a consideration would hamper and stultify human knowledge and that all persons engaged in those fields of endeavor would be subjected to the brand of outlawry typified in this case.

That the court in consideration of the summary judgment and motion to dismiss, admitted in the record as to the truth of the allegations contained in the petitioner's complaint that he was disseminating religious matters and cannot later be heard to say in view of their admissions that the matters disseminated by the petitioner were not religious matters.

Conclusion.

WHEREFORE, for the reasons stated, it is respectfully prayed that a writ of certiorari should issue from this Honorable Court to the United States Court of Appeals for the District of Columbia.

Respectfully submitted:

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